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March 24, 2005

DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Hearing Officer Decision

Name of Case: Personnel Security Hearing

Date of Filing: November 2, 2004

Case Number: TSO-0166

This Decision concerns the eligibility of XXXXXXXXXXXX(hereinafter referred to as "the individual") to hold an access authorization under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."¹ A local DOE Security Office (LSO) suspended the individual's access authorization pursuant to the provisions of Part 710. In this Decision I will consider whether, on the basis of the testimony and other evidence in the record of this proceeding, the individual's access authorization should be restored. As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual's access authorization should not be restored.

I. Background

For several years, the individual has been employed in a position that requires him to hold a DOE security clearance. In January 2001, the police arrested the individual and charged him with Driving While Intoxicated (DWI) (2001 DWI) and Careless Driving. The LSO conducted a Personnel Security Interview (PSI) with the individual in August 2001 (2001 PSI) to obtain information regarding the circumstances surrounding the 2001 DWI arrest and the extent of the individual's alcohol use. After the 2001 PSI, the DOE referred the individual to a board-certified psychiatrist (DOE consultant-psychiatrist #1) for a forensic psychiatric evaluation. DOE consultant-psychiatrist #1 examined the individual in July 2002 and concluded that the individual did not suffer from any alcohol-related disorder. *See* Exhibit 5. DOE consultant-psychiatrist #1 opined, however, that if the individual has any future alcohol-related problems then those problems are likely to indicate that the individual suffers from an alcohol use disorder. *Id.*

In December 2003, the police arrested the individual again and charged him with DWI (2003 DWI). The LSO conducted another PSI with the individual in February 2004 (2004 PSI). Soon thereafter, the LSO referred the individual to a different board-certified

¹ Access authorization is defined as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

psychiatrist (DOE consultant-psychiatrist #2) for a forensic psychiatric examination. DOE consultant-psychiatrist #2 examined the individual in April 2004 and concluded that the individual suffers from alcohol abuse, an illness which causes, or may cause, a significant defect in his judgment and reliability. *See* Exhibit 3. He also concluded that the individual habitually consumed alcohol to excess in 2003 and 2004, and that the individual is in the early stages of alcoholism. *Id.* Moreover, DOE consultant-psychiatrist #2 found that the individual is neither rehabilitated nor reformed from his alcohol abuse or his habitual consumption of alcohol to excess. *Id.*

In August 2004, the LSO initiated formal administrative review proceedings. The LSO first informed the individual that his access authorization had been suspended pending the resolution of certain derogatory information that created substantial doubt regarding his continued eligibility to hold a security clearance. In a Notification Letter that it sent to the individual, the LSO described this derogatory information and explained how that information fell within the purview of two potentially disqualifying criteria. The relevant criteria are set forth in the security regulations at 10 C.F.R. § 710.8, subsection h and j (Criteria H and J).²

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations and requested an administrative review hearing. On November 5, 2004, the Director of the Office of Hearings and Appeals (OHA) appointed me the Hearing Officer in this case. Subsequently, I convened a hearing within the regulatory time frame specified by the Part 710 regulations.

At the hearing, four witnesses testified. The LSO called one witness and the individual presented his own testimony and that of two witnesses. In addition to the testimonial evidence, the LSO submitted 25 exhibits into the record; the individual tendered one exhibit. On February 24, 2005, I received the hearing transcript (Tr.) at which time I closed the record in the case.

II. Regulatory Standard

A. Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting

² Criterion H concerns information that a person has “[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment and reliability.” 10 C.F.R. § 710.8(h). Criterion J relates to information that a person has “[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.” 10 C.F.R. § 710.8 (j).

security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that restoring his access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

B. Basis for the Hearing Officer’s Decision

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person’s access authorization eligibility in favor of the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

As previously noted, the LSO cites two potentially disqualifying criteria as the bases for suspending the individual’s security clearance, *i.e.*, Criteria H and J. To support Criterion H in this case, the LSO relies on the opinion of DOE consultant-psychiatrist #2 that (1) the individual suffers from an illness, *i.e.*, alcohol abuse, which causes, or may cause, a defect in his judgment and reliability, (2) the individual used alcohol habitually to excess in 2003 and 2004, and (3) the individual is in the early stages of alcoholism. The LSO also cites a portion of DOE consultant-psychiatrist #1’s Psychiatric Report that stated as follows: “any future significant alcohol related problems would likely indicate the presence of an alcohol use disorder.” Exhibit 5.

With regard to Criterion J, the LSO provides the following information. First, the LSO refers to the opinions of DOE consultant-psychiatrists #1 and #2 as set forth above. Second, the LSO relates that the police have arrested the individual twice for DWI, once in 2001 and a second time in 2003. Third, the LSO points out that during the 2004 PSI the individual admitted that he had voluntarily registered to attend an alcohol treatment program. However, as of April 2004, the individual had not attended the program.

The information set forth above clearly constitutes derogatory information that raises questions about the individual’s mental health and alcohol use under Criteria H and J respectively. A mental illness such as alcohol abuse can cause a significant defect in an individual’s psychological, social and occupational functioning which, in turn, raises

concerns from a security standpoint about possible defects in a person's judgment, reliability, or stability. *See* Appendix B to Subpart A of 10 C.F.R. Part 710, Guideline I, ¶ 27. In addition, excessive alcohol consumption is a security concern because the behavior can lead to the exercise of questionable judgment, unreliability, and a failure to control impulses, and can increase the risk that classified information may be unwittingly divulged. *See* Appendix B to Subpart A of 10 C.F.R. Part 710, Guideline G, ¶ 21.

IV. Findings of Fact

The facts in this case are undisputed. In January 2001 the police arrested the individual and charged him with DWI. The circumstances surrounding that arrest are as follows. On the night in question, the individual consumed four beers in three hours at a local bar and then attempted to drive home. Exhibit 14 at 8. The police stopped the individual and administered a field sobriety test to him, which the individual failed. Subsequently, the police administered a breathalyzer to the individual. The results of that test were positive for alcohol when the sample yielded a Blood Alcohol Concentration level (BAC) of .14. *Id.* at 10.

As a result of the DWI, the individual attended a DWI class, performed community service, forfeited his license for 90 days, and was placed on six months probation. *Id.* at 11. The individual also was referred for an alcohol screening assessment. *Id.*

After he received the 2001 DWI, the individual met with a personnel security specialist at which time the individual claimed that he would not drink and drive again. *Id.* at 27.

Eighteen months after he received the 2001 DWI, the individual was evaluated by DOE consultant-psychiatrist #1 who opined that the individual did not suffer from an alcohol use disorder. DOE consultant-psychiatrist #1 concluded that "any future significant alcohol-related problems are likely to indicate the presence of an alcohol use disorder." Exhibit 1.

The individual was arrested a second time and charged with DWI on December 13, 2003. The individual admits to consuming seven or eight beers before getting behind the wheel of a car and attempting to drive. Exhibit 10 at 7. After the police stopped the individual's vehicle on December 13, they administered a field sobriety test and a breathalyzer to the individual. The individual failed both tests.³

In April 2004, DOE consultant-psychiatrist #2 examined the individual and diagnosed him as suffering from alcohol abuse and habitual use of alcohol to excess.

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In

³ The individual's B.A.C. yielded a result of .14 and .13 respectively upon two administrations. Exhibit 10 at 11.

resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c).⁴ After due deliberation, I have determined that the individual's access authorization should not be restored at this time. I cannot find that such restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

A. The Individual's Testimonial and Documentary Evidence

At the hearing, the individual testified that he stopped consuming alcohol on Christmas Day 2004. Tr. at 20. He also provided documentary evidence showing that he enrolled in an alcohol recovery program on December 23, 2004 and has completed three hours of group counseling and one hour of individual counseling as of February 7, 2005.⁵ Exhibit A. The individual testified that he signed a contract with the recovery program to attend three-hour weekly counseling sessions for a period of six months. Tr. at 25.

The individual related that he currently has no alcohol in his house. *Id.* at 27. He added that his girlfriend is a great source of strength to him in his efforts to recover from his alcohol-related problems. *Id.*

B. The Girlfriend's Testimony

The individual's girlfriend testified that she sees the individual five to six days each week. *Id.* at 35. She confirmed that the individual has not consumed any alcohol since Christmas 2004 and that he has no alcohol in his house. *Id.* She related that she and the individual plan to be married in June 2006. *Id.* at 34. In this regard, the girlfriend stated that she will not put her life in jeopardy with a partner who does not behave responsibly with regard to alcohol. *Id.* at 39. The girlfriend added that she is confident that the individual will maintain his sobriety in view of the negative impact his drinking has had on his life. *Id.* at 37. The girlfriend explained that the individual's employer placed him on leave without pay when the DOE suspended his security clearance based on the security concerns connected with the individual alcohol consumption. *Id.* The girlfriend testified convincingly that she will provide whatever support is necessary to help the individual remain abstinent.

⁴ Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding his conduct, to include knowledgeable participation, the frequency and recency of his conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for his conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

⁵ The counselor at the individual's Alcohol Treatment Program diagnosed the individual as suffering from Alcohol Dependence, a more severe alcohol-related problem than alcohol abuse.

C. The Brother-in-Law's Testimony

The individual's brother-in-law, a security clearance holder himself, provided some insightful testimony at the hearing. According to the brother-in-law, the individual has matured tremendously since he started dating his girlfriend eight months ago. *Id.* at 47. The brother-in-law opined that the individual is acting more responsibly since he met his girlfriend and is seriously committed to maintaining abstinence. *Id.* at 47. The brother-in-law believes that the individual realizes that he has made mistakes in the past and now seeks to change his life. *Id.* It is the brother-in-law's opinion that the individual is ready to settle down and is making plans for marriage and a family. *Id.* at 52. The brother-in-law also confirmed that he will help the individual in his efforts to maintain sobriety. *Id.*

D. The DOE consultant-psychiatrist's Testimony

DOE consultant #2 listened to the testimony of the individual, the girlfriend, and the brother-in-law before he testified at the hearing. As an initial matter, DOE consultant-psychiatrist #2 reaffirmed his diagnoses in this case. He explained that the individual suffers from alcohol abuse and is in the early stages of alcohol dependence. *Id.* at 71.⁶ This illness, testified DOE consultant-psychiatrist # 2, is causing a significant defect in the individual's judgment and reliability. *Id.* With regard to DOE consultant-psychiatrist # 2's finding that the individual was a habitual user of alcohol to excess in 2003 and 2004, he explained that the finding is based on the individual's statements that he consumed between six and ten beers every Friday and Saturday night. *Id.* at 65, Exhibit 3 at 12.

DOE consultant-psychiatrist # 2 also reaffirmed his recommendations for rehabilitation or reformation. He opined that for the individual to be considered adequately rehabilitated, the individual should:

- (1) actively participate in meetings of Alcoholic Anonymous (AA) with a sponsor and actively work on the 12-step program for a minimum of 100 hours at least once a week for a minimum of one year and be abstinent for two years; or
- (2) satisfactorily complete a professionally run alcohol treatment program, which utilizes group process, for a minimum of 50 hours of treatment over a course of at least six months and be abstinent for two years.

To be considered adequately reformed, DOE consultant-psychiatrist #2 opined as follows. If the individual satisfactorily completes one of the two rehabilitation programs listed above, then he would need a total of two years of absolute sobriety to demonstrate adequate evidence of reformation. Should the individual elect not to participate in one of

⁶ DOE consultant-psychiatrist #2 explained in detail in the Psychiatric Report why the individual's alcohol use and concomitant conduct fall within the definition of Alcohol Abuse as that term is defined in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revised. Exhibit 3. At the hearing, DOE consultant-psychiatrist #2 also explained why the individual can be considered in the early stages of alcohol dependence. Tr. at 67.

the two listed rehabilitation programs, then the individual needs a total of three years of absolute sobriety to demonstrate adequate evidence of reformation.

It is DOE consultant-psychiatrist # 2's opinion that six weeks of abstinence and four hours of counseling sessions are inadequate to demonstrate either rehabilitation or reformation.

E. Hearing Officer Evaluation of Evidence

Based on the record before me, it appears that the individual has just begun his journey towards achieving rehabilitation and reformation from his alcohol abuse and habitual use of alcohol to excess. There are several factors that are favorable to the individual. First, the individual recognizes that alcohol has had a negative impact on his life and is trying to mend his ways. In this regard, the individual has stopped consuming alcohol and has enrolled in an alcohol treatment program. Second, the individual has a supportive girlfriend and brother-in-law, both of whom appear willing to help the individual maintain his sobriety. In the end, however, I find that the individual requires significantly more time before he could be considered rehabilitated or reformed from his alcohol-related problems.

In evaluating the evidence in this case, I accorded much weight to DOE consultant-psychiatrist #2's recommendation of the kinds of evidence needed to demonstrate adequate evidence of rehabilitation and reformation. In this regard, even if the individual follows DOE consultant-psychiatrist # 2's recommendation for treatment and sobriety, the individual will not be considered adequately rehabilitated until December 2006.

Based on my observation of the individual's demeanor at the hearing, I believe that the individual was sincere when he professed his desire to change his life. I am concerned, however, that the individual's resolve to maintain his sobriety will be tested in the future. I am mindful that the individual told a personnel security specialist in 2001 that he would not drink and drive again. However, two years later, the individual was arrested for DWI. Moreover, at the hearing the individual admitted that he had stopped drinking after he saw DOE consultant-psychiatrist # 1 but resumed drinking three months later. Lastly, I was surprised that the individual enrolled in the alcohol treatment program on December 23, 2004 and then consumed alcohol two days later on December 25, 2004. In the end, only the passage of time will determine whether the individual is ultimately successful in his recovery efforts. At this point, it is clear from the testimonial and documentary evidence in the record that the individual is far short of the timeframes required for him to demonstrate adequate evidence of rehabilitation or reformation.

In the end, after carefully weighing all the evidence, I find that the individual has not brought forth sufficient evidence to mitigate the security concerns predicated on Criteria H and J in this case.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criteria H and J. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the individual has not brought forth sufficient evidence to mitigate the security concerns advanced by the LSO. I therefore cannot find that restoring the individual's access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I have determined that the individual's access authorization should not be restored. The parties

may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28

Ann S. Augustyn
Hearing Officer
Office of Hearings and Appeals

Date: March 24, 2005